

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GEOTAG, INC.,		
v.		2:10-cv-00569-MHS-CMC
GEORGIO ARMANI S.P.A., <i>et al.</i>		
GEOTAG, INC.,		
v.		2:10-cv-00570-MHS-CMC
AROMATIQUE, INC., <i>et al.</i>		
GEOTAG, INC.,		
v.		2:10-cv-00571-MHS-CMC
GUCCI AMERICA, INC., <i>et al.</i>		
GEOTAG, INC.,		
v.		2:10-cv-00572-MHS-CMC
STARBUCKS CORP., <i>et al.</i>		
GEOTAG, INC.,		
v.		2:10-cv-00573-MHS-CMC
RENT-A-CENTER, INC., <i>et al.</i>		
GEOTAG, INC.,		
v.		2:10-cv-00574-MHS-CMC
THE WESTERN UNION COMPANY, <i>et al.</i>		

GEOTAG, INC.,

v.

2:10-cv-00575-MHS-CMC

ROYAL PURPLE, INC., *et al.*

GEOTAG, INC.,

v.

2:10-cv-00587-MHS-CMC

YAKIRA, L.L.C., *et al.*

GEOTAG, INC.,

v.

2:11-cv-00175-MHS-CMC

WHERE 2 GET IT, INC., *et al.*

**GEOTAG, INC.'S RESPONSE TO
MOVANTS' NOTICE OF ADDITIONAL AUTHORITY**

Defendants have submitted Magistrate Judge Craven's decision in *Datatern, Inc. v. Staples, Inc.*, No. 2:10-CV-133 (E.D. Tex. March 12, 2012), in support of their Motion to Stay. See Dkt. 493 in Civil Action No. 2:10-cv-00574-MS. Magistrate Judge Craven's decision in *Datatern*, however, does not support Defendants' Motion. The factual differences between *Datatern* and this case render *Datatern* distinguishable. For example:

- In *Datatern*, the Plaintiff's infringement contentions "are based on Defendant's use of SAP BusinessObjects and Microsoft ADO.NET software for its intended use of interfacing with software applications and relational databases." In addition, "Defendants assert that they are merely licensors of software from Microsoft and SAP." Order at 7-8. In this case, GeoTag's infringement contentions against Defendants are not based on their use of Microsoft or Google products, and the Moving Defendants have failed to show that this is the case. GeoTag's evidence shows that several Defendants use store locator technology provided by third parties other than Microsoft or Google and merely use maps provided by Microsoft or Google to display the end results of the store locator search process.
- In *Datatern*, the plaintiff agreed to assert the same claims in the New York action

as it was asserting in the Texas litigation and Magistrate Judge Craven concluded that the declaratory judgment action in New York involving Microsoft and SAP would “settle many [issues] and simplify them all” for all the defendants in that case. Order at 9. In this case, the Delaware declaratory judgment action involving Microsoft and Google will not settle any infringement or damages issues regarding hundreds of Defendants in this case who are not customers of Microsoft or Google, and will not even settle such issues regarding most, if not all, of the Defendants who are “customers” of Microsoft and Google in some fashion.

- In *Datatern*, the New York court refused to dismiss or stay the declaratory judgment litigation pending before it. Order at 6. In this case, the Delaware Court recently transferred to this Court the declaratory judgment action filed by Where2GetIt, declining to retain jurisdiction over that case under the “customer suit exception.” Thus, GeoTag’s claims against any customers of Where2GetIt can be resolved **only** in this Court.

Dated: April 3, 2012

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on this 3rd day of April, 2012. Any other counsel of record will be served by facsimile transmission.

/s/ Eric W. Buether

Eric W. Buether